Supreme Court, U.S.
FILED
MAY 2 3 2003
OFFICE OF THE CLERK

No. 02-1542

IN THE

Supreme Court of the United States

STEPHEN TANCREDI and RONALD SPEIDEL,

Petitioners,

—v.—

METROPOLITAN LIFE INSURANCE COMPANY and METLIFE, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

BRUCE E. YANNETT
CARL MICARELLI
(Counsel of Record)
DEBEVOISE & PLIMPTON
919 Third Avenue
New York, New York 10022
(212) 909-6000

DUNCAN J. LOGAN
METROPOLITAN LIFE
INSURANCE COMPANY
One Madison Avenue
New York, New York 10010
(212) 578-2211

Attorneys for Respondents

QUESTIONS PRESENTED

The Court of Appeals held that the complaint, which asserted claims against an insurance company and its corporate parent, properly was dismissed on the ground that it did not plead circumstances constituting state action, which is a required element of all of Petitioners' claims. The Petition purports to raise the following questions:

1. Was the decision of the Court of Appeals inconsistent with *Phillips Petroleum Co. v. Jenkins*, 297 U.S. 629 (1936)?

2. Was the decision of the Court of Appeals inconsistent with *Brown v. Legal Foundation of Washington*, 123 S. Ct. 1406 (2003)?

PARTIES AND CORPORATE DISCLOSURE STATEMENT

All of the parties to the proceeding below are listed in the caption. Respondent MetLife, Inc. is the corporate parent of Respondent Metropolitan Life Insurance Company. There is no other parent or publicly held company owning 10% or more of a Respondent's stock.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES AND CORPORATE DISCLOSURE STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 3

I. The Decision Below Raises No Issues Warranting This Court's Review, As It Follows Directly from This Court's Settled Precedent on the Issue of State Action 4

II. The Decision Below Does Not Conflict With Any Decision of Another Federal Court of Appeals or of This Court. 9

III. Policyholders' Interests Are Fully Protected by State Law. 14

CONCLUSION 16

TABLE OF AUTHORITIES

Cases:

American Manufacturers Mutual Insurance Co. v. Sullivan, 526 U.S. 40 (1999) 2, 3, 5, 6, 11

Blum v. Yaretsky, 457 U.S. 991 (1982) 5, 8, 9

Broad v. Sealaska Corp., 85 F.3d 422 (9th Cir. 1996) 9

Brown v. Legal Foundation of Washington, 123 S. Ct. 1406 (2003) 3, 4, 5, 11, 12, 13

Coombes v. Getz, 285 U.S. 434 (1932) 11

Christianburg Garment Co. v. Equal Employment Opportunity Commission, 434 U.S. 412 (1978) 6

Cranley v. National Life Insurance Co., 318 F.3d 105 (2d Cir. 2003) 9

Flagg Brothers, Inc. v. Brooks, 436 U.S. 149 (1978) 3, 8

Gayman v. Principal Financial Services, 311 F.3d 851 (7th Cir. 2002), *petition for cert. filed*, 71 U.S.L.W. 3699 (U.S. Apr. 21, 2003) (No. 02-1551) ... 3, 9

Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974) 3, 6, 8, 9

Looker v. Maynard, 179 U.S. 46 (1900) 11

Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982) 7, 8

Ohio State Life Insurance Company v. Clark, 274 F.2d 771 (6th Cir. 1960) 9

Ordower v. Office of Thrift Supervision, 999 F.2d 1183 (7th Cir. 1993) 9

Paulsen v. Commissioner, 469 U.S. 131 (1985) 14

Phillips Petroleum Co. v. Jenkins, 297 U.S. 629 (1936) 3, 4, 9, 10, 11

Rendell-Baker v. Kohn, 457 U.S. 830 (1982) 5, 8, 9

Shah v. Metropolitan Life Insurance Co., 2003 N.Y. Slip Op. 50591(U), 2003 WL 728869 (Sup. Ct. N.Y. County Feb. 21, 2003) 15

Society for Savings v. Bowers, 349 U.S. 143 (1955) 14

Tancredi v. Metropolitan Life Insurance Co., 2003 WL 1842877 (S.D.N.Y. Apr. 8, 2003) 6, 7

Williamson Regional Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985) 15

Constitutional and Statutory Provisions:

U.S. Const., Art. I, § 8 (Commerce Clause) 2, 4

U.S. Const., Art. I, § 10 (Contracts Clause) 2, 4, 5, 9, 10

U.S. Const., Amend. V (Takings Clause) ..... *passim*

U.S. Const., Amend. XIV (Due Process Clause) 2, 4

42 U.S.C. § 1983 ..... 1, 4, 5, 11

42 U.S.C. § 1988 6

N.Y. Court of Claims Act § 9(2) 15

N.Y. Ins. Law § 326(a) 14

N.Y. Ins. Law § 7312 ..... 13, 14

STATEMENT OF THE CASE

This action challenged the Plan of Reorganization (the "Plan") of Metropolitan Life Insurance Company ("MetLife"). Under the Plan, MetLife changed its form of corporate organization from a mutual life insurance company to a stock life insurance company, a process known as demutualization. The Plan was adopted unanimously by MetLife's board of directors, and was approved by a 93% vote of MetLife policyholders who voted. App. 3, 4, 9. Following a public hearing, the Plan also received the approval of the Superintendent of Insurance of the State of New York (the "Superintendent") as meeting all statutory requirements, including the requirement that the Plan be "fair and equitable" to policyholders. App. 67-169. The Plan became effective on April 7, 2000. App. 14.

The main purpose for the demutualization was to change the structure of the company in a way that will increase its potential for long-term growth and financial strength. App. 82, ¶ 32. Under the Plan, eligible policyholders such as Petitioners received consideration in exchange for their membership interests in MetLife as a mutual company. This consideration took the form of trust interests in stock, cash or policy credits, representing 100% of the equity ownership of MetLife prior to demutualization. App. 84-85, ¶ 39; App. 125, ¶ 121.

Petitioners commenced this action against MetLife and its new parent company, MetLife, Inc., in the United States District Court for the Southern District of New York. App. 170-217. The amended complaint purported to assert claims for damages against MetLife and MetLife, Inc. pursuant to 42 U.S.C. § 1983 for alleged violations of the Takings Clause of the Fifth Amendment,

the Due Process Clause of the Fourteenth Amendment, the Contracts Clause of Article I, § 10, and the Commerce Clause of Article I, § 8, arising from MetLife's adoption of the Plan. App. 202-215. The amended complaint alleged that MetLife and MetLife, Inc. were "state actors" and acted "under color of state law" in adopting and implementing the Plan, on the grounds that state law authorized the demutualization and the Plan was approved by the Superintendent. App. 182-183, ¶¶ 31-34.

Respondents moved to dismiss the amended complaint, both for lack of state action and lack of any substantive constitutional violation, or in the alternative, to stay the action on grounds of abstention. App. 14-15. The District Court granted Respondents' motion to dismiss, App. 14-31, ruling that Petitioners' amended complaint failed to allege facts amounting to state action or action under color of state law, App. 16-20. The District Court also held that even if state action had been established, Petitioners' amended complaint failed to allege any substantive constitutional violation. App. 20-30. A final judgment was entered dismissing the action. App. 13.

Petitioners appealed to the United States Court of Appeals for the Second Circuit. After briefing and argument, the Second Circuit affirmed the judgment of the District Court on January 21, 2003, App. 1-10, on the ground that "the district court correctly dismissed the complaint for lack of a sufficient allegation of state action," App. 6. In a unanimous opinion written by Judge Kearse, the panel observed that under this Court's precedents, "[i]n order to satisfy the state action requirement where the defendant is a private entity, the allegedly unconstitutional conduct must be 'fairly attributable' to the state." App. 7 (citing *American Mfrs. Mut. Ins. Co. v.*

Sullivan, 526 U.S. 40, 50 (1999)). Applying this Court's settled precedents, the Second Circuit also observed that state approval of an action by a regulated entity "does not constitute state action 'where the initiative comes from [the private entity] and not from the State' and the state 'has not put its own weight on the side of the proposed practice by ordering it.'" App. 8 (quoting *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 357 (1974); also citing *American Mfrs.*, 526 U.S. at 52, and *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 164 (1978)). Applying these principles, the Second Circuit held that demutualization was not state action because the transaction was initiated by the company's management and board of directors and approved by its policyholders. App. 9-10.

Plaintiffs subsequently filed their petition for a writ of certiorari (the "Petition") with this Court on April 21, 2003. On the same day, plaintiffs' attorneys filed a petition for certiorari in *Gayman v. Principal Financial Services*, No. 02-1551. *Gayman* involved similar claims against another company brought by the same lawyers, and its dismissal had recently been affirmed by the Seventh Circuit. *See Gayman v. Principal Fin. Servs.*, 311 F.3d 851 (7th Cir. 2002).

REASONS FOR DENYING THE WRIT

There is nothing remarkable about the decision below, which flows obviously and directly from this Court's settled case law on the requirement of state action. Petitioners' contention that the case is inconsistent with *Phillips Petroleum Co. v. Jenkins*, 297 U.S. 629 (1936), and *Brown v. Legal Foundation of Washington*, 123 S. Ct. 1406 (2003), is frivolous. *Phillips Petroleum* did not even involve the issue of state action. Moreover, *Phillips Petro-*

leum and *Brown*, unlike the present case, involved challenges to state laws that imposed mandatory obligations on private conduct. Here, however, Petitioners challenged a privately initiated and implemented transaction that was merely permitted under state law. Under this Court's settled precedent, mere permission by the state does not transform private conduct into state action.

In any event, if Petitioners genuinely believed that the Plan did not provide adequate compensation, ample remedies were available under state law. No constitutional issues are implicated.

I.
The Decision Below Raises No Issues Warranting This Court's Review, As It Follows Directly from This Court's Settled Precedent on the Issue of State Action.

The decision below raises no question of federal law that has not been settled by this Court. Rather, the decision follows easily from a straightforward application of this Court's precedents on the state-action requirement.

The amended complaint purports to state claims under 42 U.S.C. § 1983 for violation of the Takings Clause of the Fifth Amendment as applied to the states by the Due Process Clause of the Fourteenth Amendment, and for violation of the Contracts Clause of Article I, § 10.[1] A necessary element of each of these claims is "state action,"

---

[1] The Complaint also purported to raise Commerce Clause and procedural due process claims, which also require state action, but Petitioners do not raise those claims in the Petition.

which requires that the alleged constitutional deprivation be undertaken by a "state actor." *See American Mfrs.*, 526 U.S. at 50 (under Fourteenth Amendment, state action requires that the alleged constitutional deprivation be undertaken by a "state actor"); *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982) (Fourteenth Amendment "erects no shield against merely private conduct"); *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982) ("under color of law" requirement of 42 U.S.C. § 1983 means "the same thing as the 'state action' required under the Fourteenth Amendment"); U.S. Const., Art. I, § 10 ("No *State* shall . . . pass any . . . Law impairing the Obligation of Contracts") (emphasis added); *see also Brown*, 123 S. Ct. at 1421 (rejecting Takings Clause claim to extent alleged taking resulted from private action rather than state action).

Petitioners cannot satisfy the state action requirement because the Respondents are private entities and not state actors. The starting point for the analysis of allegations of state action is to "identif[y] the specific conduct of which the plaintiff complains"—here, the adoption and implementation of the Plan. *American Mfrs.*, 526 U.S. at 51. Petitioners' claims plainly fail because that purely private decision is not "fairly attributable to the state," *id.* at 50, as the Court of Appeals correctly recognized.

Petitioners seek to characterize the adoption and implementation of the Plan as state action because it was authorized by state law and received regulatory approval. As this Court expressly has held, however, "[a]ction taken by private entities with the mere approval or acquiescence of the State is not state action." *American Mfrs.*, 526 U.S. at 52; *accord Blum*, 457 U.S. at 1004 ("Mere approval of or acquiescence in the initiatives of a private party" pursuant to statute does not transmute that private initiative

into state action); *Jackson*, 419 U.S. at 357 (approval by state agency of private company's business decision "does not transmute" that private initiative into state action). The Plan was proposed by MetLife's management, adopted unanimously by MetLife's board of directors, approved by an overwhelming vote of MetLife's policyholders, and implemented by MetLife and MetLife, Inc. through an initial public offering and the distribution of consideration to MetLife's policyholders. App. 9. In holding that the state action requirement was not satisfied, the Court of Appeals reached the only conclusion possible under this Court's settled precedents. *See, e.g., American Mfrs.*, 526 U.S. at 52 (test is whether state "has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State").

Just last month, the District Court in this case granted Respondents their attorneys' fees under 42 U.S.C. § 1988 on the ground that this suit was "'frivolous, unreasonable or groundless.'" *Tancredi v. Metropolitan Life Ins. Co.*, 2003 WL 1842877, at *3 (S.D.N.Y. Apr. 8, 2003) (citing *Christianburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978)). Indicating how straightforward the result in this case was, the District Court observed:

> [T]he governing standards were clear from cases decided well before plaintiffs brought this action. "Action taken by a private entity constitutes state action only when 'there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself.'" Under established Supreme Court precedent, the fact that state law authorized the challenged action by an otherwise

> private entity or that the state granted approval without "put[ting] its own weight on the side of the proposed practice by ordering it" did not convert otherwise private action into state action. Thus, plaintiffs' state action theory was inconsistent with controlling decisions of the United States Supreme Court, and there was no responsible basis for seeking a change in the law.

Id. at *4 (footnotes omitted).[2]

Petitioners misstate the holding of *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982), in arguing that state action is established merely by showing that the defendant has exercised a right or privilege created by the state. Pet. 9. In fact, *Lugar* holds that *in addition* to the exercise of a right or privilege created by the state, state action also requires that:

> the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State.

---

[2] The District Court's recent fee order is not before this Court on this Petition. In awarding fees, the District Judge noted that he had never before granted attorneys' fees to a prevailing defendant under § 1988, and that "[a]ccess to the courts to vindicate claims of constitutional right is too important to do so lightly." 2003 WL 1842877, at *5. The District Court added, however, that "[b]oth societal and institutional interests . . . demand that such relief be available where the process is seriously abused. That is what occurred here." *Id.*

> Without a limit such as this, private parties could face constitutional litigation whenever they seek to rely on some state rule governing their interactions with the community surrounding them.

Id. at 957; *see also Flagg Bros.*, 436 U.S. at 156 (warehouse operator's sale of plaintiff's goods, though authorized by statute, was not state action). As the Court of Appeals recognized, nothing in Petitioners' amended complaint suggests that the state coerced or significantly encouraged Respondents to adopt or implement their Plan, or that the state was entwined in Respondents' management. App. 9.

Petitioners' attempt to portray a private corporation's decision to reorganize as an exercise of the state's "reserved power," Pet. 6-12, also is insufficient to establish state action under the settled precedent of this Court. To establish state action on the ground that a private entity is exercising a state function, a plaintiff must show that the private entity is exercising core governmental functions that are "the *exclusive* prerogative of the State." *Rendell-Baker*, 457 U.S. at 842 (quoting *Jackson*, 419 U.S. at 353 (emphasis added by Court); holding that education of special-needs children was not state action under "public function" theory, even when funded by state); *see also Blum*, 457 U.S. at 1011 (same, with regard to nursing home receiving public funds). Private decisions regarding the organization of private corporations, though authorized by state law, do not fall into this very narrow category. As the Court of Appeals recognized, "[t]he management of a corporation is not a public function; and a state's permission of a corporation to organize itself in a particular manner is not the delegation of governmental authority." App. 8; *accord Gayman*, 311 F.3d at 853. The

decision to undertake such private corporate changes is not even the type of decision that the state commonly makes, much less a decision that is inherently the exclusive prerogative of the state. *See Blum*, 457 U.S. at 1011; *Rendell-Baker*, 452 U.S. at 842; *Jackson*, 419 U.S. at 352-53.

II.
The Decision Below Does Not Conflict With Any Decision of Another Federal Court of Appeals or of This Court.

Petitioners' suggestion that there is a conflict among the federal Courts of Appeals on the state action issue in this case, Pet. 4, is incorrect. Every federal Court of Appeals to have considered the question has concluded that a corporate reorganization, where authorized by statute but initiated by the corporation itself, does not constitute "state action" or "governmental action" under this Court's precedents. *See Cranley v. National Life Ins. Co.*, 318 F.3d 105, 111-13 (2d Cir. 2003); *Gayman*, 311 F.3d at 853; *Broad v. Sealaska Corp.*, 85 F.3d 422, 430-31 (9th Cir. 1996); *Ordower v. Office of Thrift Supervision*, 999 F.2d 1183, 1187 (7th Cir. 1993); App. 7-10. Although Petitioners claim that these cases conflict with *Ohio State Life Insurance Company v. Clark*, 274 F.2d 771 (6th Cir. 1960), the *Clark* case did not consider or address the issue of state action. Review by this Court is unnecessary in view of the unanimity of the federal Courts of Appeals that have considered this point, and the absence of any difficult question of law.

Petitioners also have no basis for their assertion that the decision below "disregard[ed] as outdated" this Court's decision in *Phillips Petroleum Co. v. Jenkins*, 297 U.S. 629

(1936), or construed subsequent cases as "*sub silentio* overruling" the *Phillips Petroleum* decision. Pet. i. In fact, the opinion of the Court of Appeals does not even cite *Phillips Petroleum*, which has no bearing on the issue of state action.

Phillips Petroleum involved a challenge to the constitutionality of a state statute imposing liability on corporations for injuries sustained by their employees as a result of the negligence of co-employees. The Court held that this law, which "substitutes the rule of respondeat superior for the common-law fellow-servant rule," was reasonably related to government interests and consistent with both the Contracts Clause and the Equal Protection Clause. 297 U.S. at 636. As part of its ruling, the Court observed that the state's reserved power to amend laws affecting corporations defeated the petitioner's Contracts Clause claim. *Id.* at 634. The Court also noted that "[t]he reserved power is not unlimited and cannot be exerted . . . to take property without compensation." *Id.*

Contrary to the impression Petitioners attempt to create, Pet. 10, the presence of state action was not in dispute in *Phillips Petroleum*. Moreover, that case involved the imposition of liability on corporations by state law. Here, in stark contrast, Petitioners challenged a corporate decision initiated and implemented by a private corporation. As this Court's cases make clear, a private decision to exercise a right granted by statute is not "state action," absent coercion or significant encouragement that demon-

strates that the decision is attributable to the state. *See, e.g., American Mfrs.*, 526 U.S. at 52.[3]

Accordingly, petitioners cannot satisfy the state-action requirement. The *Phillips Petroleum* language cited by Petitioners addresses only substantive restrictions that the Takings Clause or Contracts Clause places on actions taken *by the state*. That language is irrelevant where, as here, a private party has initiated and undertaken the challenged conduct. Petitioners' claim of a "direct conflict" between *Phillips Petroleum* and the decision below is therefore baseless.

For similar reasons, Petitioners' assertion that the decision below conflicts with this Court's decision in *Brown v. Legal Foundation of Washington*, 123 S. Ct. 1406 (2003), is completely meritless. In *Brown*, the Court rejected a challenge to a Washington state-court rule, which required certain escrowed funds to be held in an account subject to the state's "interest on lawyers' trust accounts" ("IOLTA") program if the funds could not generate net interest for the client's benefit. The interest on the IOLTA account was paid to a foundation for public purposes. *See* 123 S. Ct. at 1421. The Court "*assume[d]* that . . . [petitioners'] interest was taken for a public use" under this procedure. *Id.* at 1419 (emphasis added). The Court concluded, however, that the petitioners lost nothing of value, because the IOLTA rules applied only

---

[3] For similar reasons, Petitioners' reliance on *Coombes v. Getz*, 285 U.S. 434 (1932) and *Looker v. Maynard*, 179 U.S. 46 (1900), is misplaced. Like *Phillips Petroleum*, neither of those cases arose under 42 U.S.C. § 1983, and neither of them addressed the issue of state action.

when the funds could not generate net interest for their owner. *Id.* at 1419-20. The Court held, therefore, that the amount of "just compensation" was zero. *Id.*

Petitioners' reliance on the assumption in *Brown* that a taking had occurred has no bearing on the issues in this case, because the mandatory IOLTA requirement in *Brown*—unlike MetLife's decision to demutualize—clearly involved state action. In *Brown*, the State of Washington *required* all lawyers and limited practice officers ("LPOs") to place escrowed funds in IOLTA accounts whenever they determined that the funds could not generate net interest for the client. Here, by contrast, the state has not required any company to demutualize. As described above, MetLife's Plan was initiated by its management, adopted by its board of directors and approved by a policyholder vote, and MetLife was entirely free not to pursue a reorganization under the demutualization statute if it so chose.[4]

As *Brown* itself makes clear, action that would violate the Takings Clause if undertaken by the state raises no constitutional concern if it is undertaken by a private party. Indeed, the petitioners in *Brown* argued that the IOLTA rule might cause lawyers or LPOs to deposit funds in IOLTA accounts mistakenly, even if the funds could generate net income. *Id.* at 1420. The Court, however, rejected the notion that this amounted to a Takings Clause violation, holding that the likelihood of erroneous

---

[4] For the same reason, the remaining Takings Clause cases cited by the Petitioners (Pet. 13-16), which presuppose coercion by the state, are inapposite.

deposits by private actors did not undermine the validity of the IOLTA process created by the state. *Id.* at 1421. The Court observed:

> The [Washington State IOLTA] Rules . . . unambiguously require lawyers and LPOs to deposit client funds in non-IOLTA accounts whenever those funds could generate net earnings for the client. . . . Thus, if the LPOs who deposited petitioners' money in IOLTA accounts could have generated net income, the LPOs violated the court's Rules. Any conceivable net loss to petitioners was the consequence of the LPOs' *incorrect private decisions rather than any state action.*

Id. (emphasis added).

Here, too, any claim by the Petitioners that compensation distributed by MetLife under the Plan was inadequate was not the result of any action by the state. The Plan was a privately initiated and implemented decision. Moreover, under New York law, the amount and allocation of consideration among policyholders is left to the discretion of the company adopting a plan of reorganization, subject only to the requirement that it be "fair and equitable to policyholders." N.Y. Ins. Law § 7312(c)(3), (d)(4)(A)-(B), (e)(1), (j). Accordingly, as with the mistaken IOLTA deposits addressed in *Brown*, any conceivable harm to policyholders from an allegedly unfair demutualization would be the result of the demutualizing company's putatively "incorrect private decisions, rather than any state action." *Brown*, 123 S. Ct. at 1421. For this reason, Petitioners have no viable constitutional claim.

III.
Policyholders' Interests Are Fully Protected by State Law.

Finally, Petitioners' assertion that the decision below "affect[s] significant and valuable property rights," Pet. 16, is incorrect. Even putting aside the widely recognized fact that membership interests in a mutual organization lack tangible economic value in the absence of a demutualization,[5] state law governing demutualizations amply protects any interests that policyholders may have.

Any policyholder who believed that the Plan failed to provide fair and equitable consideration in exchange for policyholders' membership interests, or otherwise failed to meet the applicable legal requirements, had an opportunity to object to the Plan orally or in writing at a public hearing before the Superintendent. N.Y. Ins. Law § 7312(i); *see* App. 79-80, ¶¶ 25-26, 28. In addition, any policyholder who believed the Plan was improperly approved could seek judicial review in state court. *See* N.Y. Ins. Law § 326(a) ("any order . . . or decision of the superintendent is . . . subject to judicial review in a pro-

---

[5] *See, e.g., Paulsen v. Commissioner*, 469 U.S. 131, 138-40 (1985) (value of membership interests in mutual savings bank was "practically, zero"); *Society for Savings v. Bowers*, 349 U.S. 143, 150 (1955) (same); App. 21-22 & n.22 (District Court opinion, citing cases holding that mutual company membership interests, whether in insurance company or savings bank, are "too insubstantial" to constitute property). As the District Court recognized, Petitioners' contractual rights in their insurance contracts are expressly preserved by the Plan and are unimpaired as a matter of New York law. App. 20-21 & nn. 18-19; App. 25-26 & n.34.

ceeding under article seventy-eight of the civil practice law and rules"); *Shah v. Metropolitan Life Ins. Co.*, 2003 N.Y. Slip Op. 50591(U), at *21-23, 26, 30, 34, 37, 40, 2003 WL 728869 (Sup. Ct. N.Y. County Feb. 21, 2003) (recognizing availability of such state judicial review proceeding to challenge Superintendent's approval of Plan).[6]

Petitioners' suggestion that policyholders were somehow denied justice is therefore completely unfounded. The matters of corporate organization that Petitioners challenge are entrusted to the business judgment of the company's board of directors and to the judgment of the voting policyholders, subject to regulation by the state for policyholders' protection. No issues of federal law warranting this Court's attention are implicated.

---

[6] Moreover, if Petitioners were correct that the demutualization was a taking of their property by the state, they could have brought an inverse condemnation action against the state in the New York Court of Claims. *See* N.Y. Court of Claims Act § 9(2) (authorizing suit against state for compensation for "appropriation of real or personal property or any interest therein"). Having chosen to forgo this speedy and adequate state remedy, Petitioners cannot complain that the state violated their constitutional rights. *See Williamson Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194-97 (1985) (existence of adequate state remedy to obtain compensation defeats claim of denial of just compensation under Takings Clause).

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that the Court deny the Petition.

Respectfully submitted,

BRUCE E. YANNETT
CARL MICARELLI
(Counsel of Record)
DEBEVOISE & PLIMPTON
919 Third Avenue
New York, New York 10022
Telephone: (212) 909-6000

DUNCAN J. LOGAN
METROPOLITAN LIFE
INSURANCE COMPANY
One Madison Avenue
New York, New York 10010
Telephone: (212) 578-2211

Attorneys for Respondents

May 22, 2003